

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201348656
Issue No: 6019
Case No: [REDACTED]
Hearing Date: July 18, 2013
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on May 8, 2013. After due notice, a telephone hearing was held on July 18, 2013 at which Claimant appeared and provided testimony. The department was represented by [REDACTED], an assistance payments supervisor; [REDACTED], a PATH worker; and [REDACTED], an eligibility specialist, all employed with the department's Washtenaw County office. The department was also represented by [REDACTED], a regulation agent with the department's Office of Inspector General (OIG).

ISSUE

Whether the department properly determined Claimant's eligibility for Child Development and Care (CDC) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was a recipient of CDC benefits at all times relevant to this hearing.
2. On March 11, 2013, [REDACTED], a regulation agent with the department's OIG, contacted Claimant by telephone and Claimant reported that she resided only with her children. Claimant further reported that while the father of her children, [REDACTED], was listed on a previous [REDACTED] bill, this is because she has an account with [REDACTED] that is past due.

3. On or about March 11, 2013, the department's OIG conducted a LexisNexis inquiry which revealed that [REDACTED] resides at Claimant's address. The department's OIG also conducted a Secretary of State inquiry which revealed that [REDACTED] has listed a physical address in [REDACTED], Michigan and a mailing address as Claimant's residence.
4. On May 1, 2013, the department mailed Claimant a Notice of Case Action (DHS 1605), informing Claimant that her CDC benefits ended on April 6, 2013 because "it was found by the [OIG] that [REDACTED] lives in [Claimant's] home ...he can watch his own children since he is not employed or going to school." (Department Exhibit 1)
5. At no time prior to the department's closure of Claimant's CDC benefits did the department issue Claimant a Verification Checklist (DHS 3503), allowing Claimant the opportunity to provide verification of her household's membership.
6. On May 8, 2013, Claimant requested a hearing, protesting the closure of her CDC benefits. (Request for Hearing)
7. On July 10, 2013, the department provided the Michigan Administrative Hearing System with a hearing packet that contained the following: Hearing Summary, Request for Hearing, Notice of Hearing, and May 1, 2013 Notice of Case Action. No other documents relating to Claimant's hearing request were contained in the hearing packet. (Hearing Packet)
8. Prior to the scheduled hearing, Claimant submitted to the department a notarized affidavit signed by [REDACTED], wherein [REDACTED] averred that he does not live at Claimant's residence. The department did not provide a copy of this affidavit to the Michigan Administrative Hearing System.

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

The Child Development and Care (CDC) program was established by Titles IVA, IVE, and XX of the Social Security Act, the Child Care and Development Block Grant of

1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The department provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

The goal of the CDC program is to preserve the family unit and to promote its economic independence and self-sufficiency by promoting safe, affordable, accessible, quality child care for qualified Michigan families. BEM 703. The department may provide a subsidy for child care services for qualifying families when the parent(s)/substitute parent(s) is unavailable to provide the child care because of employment, participation in an approved activity and/or because of a condition for which treatment is being received and care is provided by an eligible provider. BEM 703.

Department policy provides that clients must cooperate with the local office in determining initial and ongoing eligibility with all programs. This includes completion of the necessary forms. BAM 105. Department policy further states that CDC payments will not be made until all eligibility and need requirements are met and care is being provided by an eligible provider. BEM 706. Eligibility and need requirements can not be determined until all forms have been received by the department. BEM 702.

Department policy further provides that clients must take actions within their ability to obtain verifications and Department staff must assist when necessary. BAM 130, BEM 702. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130. A client must be given 10 calendar days (or other time limit specified in policy) to provide the requested verification. If the client cannot provide the verification despite a reasonable effort, the department should extend the time limit at least once. BAM 130. The department should send a negative action notice when (i) the client indicates a refusal to provide a verification; or (ii) the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130.

Department policy further provides that for CDC eligibility to exist for a given child, the client must apply for CDC, meet the requirements of an eligibility group, have a valid need reason, and use an eligible provider. BEM 703.

Each parent/substitute parent (P/SP) must demonstrate a valid need reason during the time child care is requested. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of: (i) family preservation; (ii) high school completion; (iii) an approved activity or (iv) employment. BEM 703. In two parent households, both parents' need reasons must be verified with the appropriate verification. BEM 703.

In this case, Claimant challenges the department's closure of her CDC benefits based on the department's determination that the father of her children resides with her in her home.

At the July 18, 2013 hearing, [REDACTED], a regulation agent with the department's OIG, testified that she concluded that the father of Claimant's children, [REDACTED], was living in Claimant's home based on the fact that a previous [REDACTED] bill had his name on it and based on the fact that a LexisNexis inquiry indicated that he resided with Claimant. However, both [REDACTED] and [REDACTED], an assistance payments supervisor with the department's Washtenaw County office, acknowledged that the department did not provide this Administrative Law Judge with the [REDACTED] bill, the LexisNexis inquiry, or any other documentary evidence to support the OIG's determination that [REDACTED] is living in Claimant's home. Moreover, [REDACTED], a PATH worker with the department's Washtenaw County office, acknowledged that the department did not give Claimant the opportunity to verify her household's membership before the department notified her on May 1, 2013 that her CDC benefits had been closed as of April 6, 2013. Finally, [REDACTED] acknowledged having received from Claimant a notarized affidavit by [REDACTED], wherein he averred under penalty of perjury that he did not live at Claimant's residence. According to [REDACTED], this affidavit, which the department received prior to the hearing but failed to provide to this Administrative Law Judge, provided the department with sufficient verification to remove [REDACTED] from Claimant's CDC group.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds, based on the competent, material and substantial evidence presented during the July 18, 2013 hearing, that the department not only failed to provide Claimant with an opportunity to verify her household membership in advance of the closure of her CDC benefits, but the department failed to offer any documentary evidence pursuant to BAM 600 to support the department's determination that [REDACTED] resided with Claimant. This Administrative Law Judge further finds that Claimant's submittal to the department of a sworn, notarized affidavit by [REDACTED] attesting that he does not live with Claimant conclusively refutes the department's determination in this regard. Consequently, the department did not act in accordance with policy when the department closed Claimant's CDC benefits effective April 6, 2013.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not act in accordance with policy when the department closed Claimant's CDC benefits effective April 6, 2013. Accordingly, the department's actions are **REVERSED** and the department shall immediately reinstate Claimant's CDC benefits and issue supplement checks for any months she did not receive the correct amount of benefits if she was otherwise entitled to them.

IT IS SO ORDERED.

/s/

Suzanne D. Sonneborn
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 31, 2013

Date Mailed: July 31, 2013

NOTICE: Michigan Administrative Hearings System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal this Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - Misapplication of manual policy or law in the hearing decision,
 - Typographical errors, mathematical errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

201348656/SDS

A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

